

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 10F-BD074-SBD

3 **S & S FINANCIAL, INC. DBA SUNDT**
4 **MORTGAGE GROUP AND GERALD W.**
5 **SUNDT, PRESIDENT**
4810 E. Camp Lowell Road
Tucson, Arizona 85712

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

6 Respondents.

7 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
8 makes the following Findings of Fact and Conclusions of Law and enters the following Order
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

10 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
11 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
12 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
13 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
14 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
15 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

16 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
17 her own behalf or by counsel. If Respondents are represented by counsel, the information required
18 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
19 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
20 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
21 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
22 **physical accessibility.** Requests for special accommodations must be made as early as possible to
23 allow time to arrange the accommodations. If accommodations are required, call the Office of
24 Administrative Hearings at (602) 542-9826.

25 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
26 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled

1 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
2 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
3 Department will be present (the "Department Representative"). Please note that in requesting an
4 Informal Settlement Conference, Respondents waive any right to object to the participation of the
5 Department Representative in the final administrative decision of this matter, if it is not settled. In
6 addition, any written or oral statement made by Respondents at such informal settlement conference,
7 including written documentation created or expressed solely for purposes of settlement negotiations,
8 are inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
9 regarding informal settlement conferences.) Conversely, any written or oral statement made by
10 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
11 Department in any subsequent hearing.

12 If Respondents do not request a hearing, this Order shall become final. If Respondents
13 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
14 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
15 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
16 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
17 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
18 132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-905; (4) an
19 order to pay restitution of any fees earned on loans made in violation of A.R.S. § 6-901, *et seq.*,
20 pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or
21 proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§
22 6-123 and 6-131.

23 FINDINGS OF FACT

24 1. Respondent S & S Financial Inc. dba Sundt Mortgage Group ("Sundt Mortgage"), is an
25 Arizona Corporation that is authorized to transact business in Arizona as a mortgage broker (license
26 number MB 0906420) within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Sundt

1 Mortgage's business is that of a mortgage broker, within the meaning of A.R.S. § 6-901(11).

2 2. Respondent Gerald W. Sundt ("Mr. Sundt") is the owner of Sundt Mortgage. Mr. Sundt is
3 authorized to transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-
4 903(H).

5 3. Neither Sundt Mortgage nor Mr. Sundt are exempt from licensure as mortgage brokers within
6 the meaning of A.R.S. § 6-902.

7 4. An examination of Respondents conducted by the Department, beginning March 24, 2009
8 and concluding April 9, 2009, revealed that Sundt Mortgage and Mr. Sundt:

9 a. Failed to include their mortgage broker license number as issued on the mortgage
10 broker's principal place of business license within the text of their advertisements
11 and solicitations, specifically:

12 i. Failed to include the mortgage broker principal place of business license
13 number on their website, www.sundtmortgagegroup.com;

14 ii. Failed to include the mortgage broker principal place of business license
15 number on their "Sundt" billboard and bus stop signs;

16 iii. Failed to include the mortgage broker principal place of business license
17 number in the Tucson Newspaper banner; and

18 iv. Failed to include the mortgage broker principal place of business license
19 number on their Steve Shackangast bus stop signs;

20 b. Failed to conduct the minimum elements of reasonable employee investigations
21 prior to hiring employees, specifically:

22 i. Failed to obtain all Immigration Reform and Control Act documents before
23 hiring at least one (1) employee;

24 ii. Failed to obtain a completed Employment Eligibility Verification (Form I-9)
25 before hiring at least six (6) employees;

26 iii. Failed to obtain a completed and signed employment application before hiring

- 1 at least six (6) employees;
- 2 iv. Failed to obtain a signed statement attesting to all of an applicant's felony
- 3 convictions, including information regarding each conviction, before hiring at
- 4 least six (6) employees;
- 5 v. Failed to consult with the applicant's most recent or next most recent
- 6 employer before hiring at least six (6) employees;
- 7 vi. Failed to inquire regarding the applicant's qualifications and competence for
- 8 the position before hiring at least six (6) employees; and
- 9 vii. Failed to obtain a current credit report from a credit reporting agency before
- 10 hiring at least six (6) employees;
- 11 c. Failed to maintain originals or copies of loan transactions, specifically:
- 12 i. A document showing the application's final disposition was missing from five
- 13 (5) mortgage loan files;
- 14 ii. Closing documents, including closing instructions, an executed note and a
- 15 deed were missing from one (1) mortgage loan file; and
- 16 iii. An assignment of beneficial interest made by the licensee was missing from
- 17 one (1) mortgage loan file;
- 18 d. Allowed borrowers to sign regulated documents containing blank spaces without
- 19 authorization, specifically:
- 20 i. Respondents allowed at least two (2) borrowers to sign Final Servicing
- 21 Transfer disclosures containing blank spaces;
- 22 ii. Respondents allowed at least seven (7) borrowers to sign 4506-T forms
- 23 containing blank spaces; and
- 24 iii. Respondents allowed at least two (2) borrowers to sign Authorization to
- 25 Complete Blank Spaces forms containing blank spaces;
- 26 e. Failed to comply with the disclosure requirements of Title I of the Consumer

Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts, specifically:

- i. Notice of Adverse Action Taken disclosures were missing in at least four (4) loan files; and
 - ii. Respondents failed to disclose fees of thirty five dollars (\$35.00) for document preparation and thirty five dollars (\$35.00) for flood certification in at least two (2) loan files; and
 - iii. The Truth-in-Lending disclosure was missing the APR calculation for at least one (1) borrower; and
 - iv. The Initial Application was undated or missing, and it cannot be determined that the Good Faith Estimates, Truth-in-Lending disclosures, and Servicing Transfer disclosures were provided within three (3) business days as required to at least six (6) borrowers; and
 - v. The Good Faith Estimates, Truth-in-Lending disclosures, and Servicing Transfer disclosures were dated prior to the application date or missing in at least eleven (11) loan files; and
 - vi. The Yield Spread Premium was not disclosed on the Good Faith Estimates provided to at least four (4) borrowers;
- f. Made false promises or misrepresentations and concealed essential or material facts in the course of the mortgage broker business, specifically;
- i. Borrower P. R. closed two (2) mortgage loan transactions on two (2) different properties with Respondents. Mr. Sundt was the loan officer on both transactions. Transaction one (1) was funded by Everbank on 03-31-08 and was an owner-occupied refinance including a first mortgage totaling \$144,000.00. Transaction two (2) was funded by JPMorgan Chase Bank on

1 05-22-08 and was an owner-occupied purchase including a first mortgage
2 totaling \$292,600.00.

3 On 03-03-08, the Respondents originated an application for the refinance of
4 an owner-occupied home, and an application for the purchase of an owner-
5 occupied home. The mortgage file for Transaction one (1) included an
6 FNMA loan application (form 1003), dated 03-25-08, which did not disclose
7 Transaction two (2). Respondents failed to disclose or include the purchase of
8 Transaction two (2). Closing documents for Transaction one (1) included a
9 borrower's closing affidavit confirming intent to owner-occupy.
10 Respondents' file for Transaction two (2) contained a signed sales contract
11 dated 08-01-07, an appraisal on the property dated 03-17-08 and a preliminary
12 title policy dated 02-28-08, listing Sundt Mortgage as proposed insured.
13 Respondents used the same credit report, dated 03-03-08, for each transaction
14 and submitted each transaction to different end lenders. Failure to disclose
15 this new owner-occupied purchase transaction concealed a \$292,600.00
16 mortgage obligation. In order for a lender to make a prudent underwriting
17 decision they must know all liabilities and potential liabilities of the borrower.
18 It also affects the amount of money available to close the loans and the
19 required reserves after the loans close. The borrower's clear intent was to
20 purchase an additional home of which Respondents had full knowledge and
21 helped conceal from the lender;

22 ii. Borrower B. B. closed two (2) mortgage loan transactions with Respondents
23 on two (2) different properties. The loan officer on both transactions was Mr.
24 Sundt. Transaction one (1) was a second home refinance including a first
25 mortgage totaling \$173,000.00 financed by ABN Amro Mortgage Group, Inc.
26 on 04-25-07. Transaction (2) was a second home purchase including a first

1 mortgage totaling \$213,300.00 financed by American Mortgage Network, Inc.
2 On 11-03-06, Respondents originated an application for the refinance of a
3 second home and an application for the purchase of a second home. The
4 mortgage file for Transaction one (1) included an FNMA loan application
5 (form 1003), dated 04-20-07, which did not disclose Transaction two (2).
6 Respondents failed to disclose or include the purchase of Transaction two (2).
7 Respondents' file for Transaction two (2) contained a signed sales contract
8 dated 04-11-07, an appraisal on the property dated 04-23-08, a preliminary
9 title policy dated 03-27-07 listing Sundt Mortgage as proposed insured and a
10 lease agreement for the property in Transaction one (1), dated 01-25-07 and
11 effective 02-01-07. The lease agreement clearly demonstrates Transaction
12 one (1) was not a second home but a rental or investment property.
13 Respondents submitted each transaction to different end lenders. Failure to
14 disclose this new second home purchase transaction concealed a \$213,300.00
15 mortgage obligation. In order for a lender to make a prudent underwriting
16 decision they must know all liabilities and potential liabilities of the borrower.
17 It also affects the amount of money available to close the loans and the
18 required reserves after the loans close. The borrower's clear intent was to
19 purchase an additional home of which Respondents had full knowledge and
20 helped conceal from the lender; and

21 iii. Borrower D. B. closed two (2) mortgage loan transactions with Respondents
22 on two (2) different properties. Transaction one (1) was an investment
23 purchase including a first mortgage totaling \$158,007.00 financed by ABN
24 Amro Mortgage Group, Inc. Transaction two (2) was an investment purchase
25 including a first mortgage totaling \$146,562.00 financed by Freedom Home
26 Mortgage Corporation.

1 On 04-21-07, Respondents originated two (2) applications for the purchase of
2 two (2) investment homes. The mortgage file for Transaction one (1)
3 included an FNMA loan application (form 1003), dated 05-09-07, which did
4 not disclose Transaction two (2). Respondents failed to disclose or include
5 the purchase of Transaction two (2). The mortgage file for Transaction two
6 (2) included an FNMA loan application (form 1003), dated 05-09-07, which
7 did not disclose Transaction one (1). Transaction one (1) contains a purchase
8 contract dated 04-07-07 and Transaction two (2) contains a purchase contract
9 dated 04-06-07. Both transactions contain a property appraisal dated 05-07-
10 07. Respondents submitted each transaction to different end lenders. Failure
11 to disclose Transaction two (2) to Transaction one's (1) end lender concealed
12 a \$146,562.00 mortgage obligation. Failure to disclose Transaction one (1) to
13 Transaction two's (2) end lender concealed a \$158,007.00 mortgage
14 obligation. In order for a lender to make a prudent underwriting decision they
15 must know all liabilities and potential liabilities of the borrower. It also
16 affects the amount of money available to close the loans and the required
17 reserves after the loans close. The borrower's clear intent was to purchase an
18 additional home of which Respondents had full knowledge and helped conceal
19 from the lender;

- 20 g. Failed to use a statutorily correct written document agreement, signed by all
21 parties, when accepting documents in connection with an application for a
22 mortgage loan;
- 23 h. Respondents' Responsible Individual, Gerald W. Sundt, failed to be in active
24 management of Respondents' activities, as evidenced by Respondents' nine (9)
25 violations of statutes and rules, which include three (3) separate loans with
26 misrepresentations and concealment of material facts; and

- 1 i. Used an unlawful appraisal disclosure that limits a borrower to ninety (90) days in
2 which the borrower may request a copy of an appraisal for which the borrower
3 has paid.

4 5. These Findings of Fact shall also serve as Conclusions of Law.

5 **CONCLUSIONS OF LAW**

6 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
7 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
8 rules and regulations relating to mortgage brokers.

9 2. By the conduct set forth in the Findings of Fact, S & S Financial Inc. dba Sundt Mortgage
10 Group and Mr. Sundt have violated the following:

- 11 a. A.R.S. §§ 6-903(P) and 6-906(D), by failing to include their mortgage broker license
12 number as issued on the mortgage broker's principal place of business license within
13 the text of all advertisements and solicitations;
- 14 b. A.R.S. § 6-903(Q) and A.A.C. R20-4-102, by failing to conduct the minimum
15 elements of reasonable employee investigations prior to hiring employees;
- 16 c. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6), by failing to maintain originals or
17 copies of loan transactions;
- 18 d. A.R.S. § 6-909(A) and A.A.C. R20-4-921, by allowing borrowers to sign regulated
19 documents containing blank spaces without authorization;
- 20 e. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with the
21 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
22 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
23 2601 through 2617), and the regulations promulgated under these acts;
- 24 f. A.R.S. § 6-909(L), by making misrepresentations and concealing material facts in the
25 course of the mortgage broker business regarding at least (3) mortgages;
- 26 g. A.R.S. § 6-906(C), by failing to use a statutorily correct written document agreement,

1 signed by all parties, when accepting documents in connection with an application for
2 a mortgage loan;

3 h. A.R.S. § 6-903(H) and A.A.C. R20-4-102, by failing to ensure that Respondents'
4 Responsible Individual was in active management of Respondents' activities, as
5 evidenced by Respondents' nine (9) violations of statutes and rules, which include
6 three (3) separate loans with misrepresentations and concealment of material facts;
7 and

8 i. A.R.S. § 6-906(C), by using an unlawful appraisal disclosure that limits a borrower to
9 ninety (90) days in which the borrower may request a copy of an appraisal for which
10 the borrower has paid.

11 3. The violations set forth above constitute grounds for: (1) the issuance of an order
12 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
13 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
14 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;
15 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; (3) the suspension or
16 revocation of Respondents' license pursuant to A.R.S. § 6-905; (4) an order to pay restitution of any
17 fees earned on loans made in violation of A.R.S. § 6-901, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3)
18 and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes
19 and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

20 ORDER

21 1. S & S Financial Inc. dba Sundt Mortgage Group and Mr. Sundt shall immediately
22 stop the violations set forth in the Findings of Fact and Conclusions of Law. Sundt Mortgage and
23 Mr. Sundt:

24 a. Shall include the name and mortgage broker license number as issued on the
25 mortgage broker's principal place of business license within all advertisements and solicitations;

26 b. Shall conduct the minimum elements of reasonable employee investigations

1 prior to hiring employees;

2 c. Shall maintain originals or copies of loan transactions;

3 d. Shall not allow borrowers to sign regulated documents containing blank
4 spaces without authorization;

5 e. Shall comply with the disclosure requirements of Title I of the Consumer
6 Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act
7 (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;

8 f. Shall not make false promises, misrepresentations, and or conceal an essential
9 or material fact in the course of the mortgage broker business;

10 g. Shall use a statutorily correct written document agreement, signed by all
11 parties;

12 h. Shall ensure that their Responsible Individual, remains in active management
13 of Respondents' activities; and

14 i. Shall not use an unlawful appraisal disclosure that limits a borrower to ninety
15 (90) days in which the borrower may request a copy of an appraisal for which the borrower has paid.

16 2. S & S Financial Inc. dba Sundt Mortgage Group and Mr. Sundt shall immediately pay
17 to the Department a civil money penalty in the amount of **ten thousand dollars (\$10,000.00)**. S & S
18 Financial Inc. dba Sundt Mortgage Group and Mr. Sundt are jointly and severally liable for payment
19 of the civil money penalty.

20 3. S & S Financial Inc. dba Sundt Mortgage Group and Mr. Sundt shall immediately pay
21 to the Department the examination fee of **two thousand, six hundred thirty two dollars and fifty**
22 **cents (\$2,632.50)**.

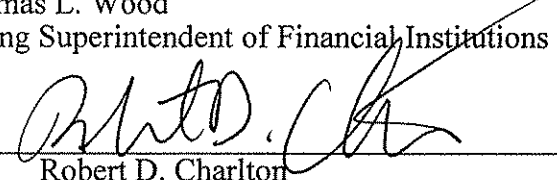
23 4. Mr. Sundt shall comply with all Arizona statutes and rules regulating Arizona
24 mortgage brokers, A.R.S. §§ 6-901, *et seq.*

25 5. The provisions of this Order shall be binding upon Respondents, their employees,
26 agents and other persons participating in the conduct of the affairs of Respondents.

1 6. This Order shall become effective upon service, and shall remain effective and
2 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
3 or set aside.

4 SO ORDERED this 14th day of December, 2009.

5 Thomas L. Wood
6 Acting Superintendent of Financial Institutions

7 By: 
8 Robert D. Charlton
 Assistant Superintendent

9 **CONSENT TO ENTRY OF ORDER**

10 1. Respondents acknowledge that they have been served with a copy of the foregoing
11 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
12 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

13 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
14 the foregoing Findings of Fact, Conclusions of Law, and Order.

15 3. Respondents state that no promise of any kind or nature has been made to induce
16 them to consent to the entry of this Order, and that they have done so voluntarily.

17 4. Respondents agree to immediately cease from engaging in the violative conduct set
18 forth above in the Findings of Fact and Conclusions of Law.

19 5. Respondents acknowledge that the acceptance of this Agreement by the
20 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
21 or officer of this state or subdivision thereof from instituting other proceedings as may be
22 appropriate now or in the future.

23 6. Mr. Gerald W. Sundt, on behalf S & S Financial Inc. dba Sundt Mortgage Group and
24 himself, represents that he is the President, and that, as such, has been authorized by S & S Financial
25 Inc. dba Sundt Mortgage Group to consent to the entry of this Order on its behalf.

26 7. Respondents waive all rights to seek judicial review or otherwise to challenge or

1 contest the validity of this Cease and Desist Order.

2 DATED this _____ day of _____, 2009.

3
4 By: _____
5 Gerald W. Sundt, Owner
6 S & S Financial Inc. dba Sundt Mortgage Group
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9

10 ORIGINAL of the foregoing filed this 14th
11 day of December, 2009, in the office of:

12 Thomas L. Wood
13 Acting Superintendent of Financial Institutions
14 Arizona Department of Financial Institutions
15 ATTN: Susan Longo
16 2910 N. 44th Street, Suite 310
17 Phoenix, AZ 85018

18 COPY mailed/delivered same date to:

19 Erin O. Gallagher
20 Assistant Attorney General
21 Office of the Attorney General
22 1275 West Washington
23 Phoenix, AZ 85007

24 Robert D. Charlton, Assistant Superintendent
25 Brian Naig, Senior Examiner
26 Arizona Department of Financial Institutions
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

S & S Financial Inc. dba Sundt Mortgage Group
Attn: Gerald W. Sundt, President
4810 E. Camp Lowell Road
Tucson, AZ 85712
Respondents

1 Johnny N. Helenbolt, Statutory Agent for
2 S & S Financial Inc. dba Sundt Mortgage Group
3 Duffield, Young, Adamson PC
4 3430 E. Sunrise Drive, Suite 200
5 Tucson, AZ 85718

6 By: *Susan Lingo*
7 # 509047

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